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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 658/2016 & CM No. 2743/2016, 848/2018, 849/2018 & 850/2018</u>**

BATRA HOSPITAL & MEDICAL RESEARCH CENTRE ..... Petitioner

Through: Mr Ashok Chhabra and Mr Nikhil Karwal, Advocates.

versus

CENTRAL INFORMATION COMMISSION AND ANR ..... Respondents

Through: Respondent no.2 in person.

AND

\+ **<u>W.P.(C) 707/2016 & CM No. 2985/2016</u>**

BATRA HOSPITAL & MEDICAL RESEARCH CENTRE ..... Petitioner

Through: Mr Ashok Chhabra and Mr Nikhil Karwal, Advocates.

versus

CENTRAL INFORMATION COMMISSION AND ANR ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **06.02.2018**

<u>VIBHU BAKHRU, J</u>

1. The petitioner has filed the present petitions, *inter alia*, impugning the common orders dated 01.07.2015 & 10.09.2015 (hereafter 'the impugned orders') passed by the Central Information

Commission (hereafter 'the CIC') holding the petitioner to be a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter 'the RTI Act').

2. None appears for Shri Deepak Kumar, respondent no. 2 in WP(C) 707/2016 despite notice. It is seen that none has been appearing on behalf of respondent no. 2 in W.P.(C) 707/2016 at the previous hearings as well. In view of the above, this Court does not consider it apposite to defer the hearing of the petitions to await a representation on his behalf.

3. The information sought by the information seekers arrayed as respondent no.2 in both the petitions, under the RTI Act, was denied by the petitioner on the ground that the petitioner was not a 'public authority' as defined under Section 2(h) of the RTI Act. The controversy involved in both the matters is common and, therefore, both the petitions are taken up together.

4. The only question to be addressed in the present petitions is whether the petitioner is a 'public authority' as defined under Section 2(h) of the RTI Act.

5. The petitioner hospital is a unit of Ch. Aishi Ram Batra Public Charitable Trust registered under the Societies Registration Act, 1860 and was set up at Tughlakabad Institutional Area in the name and style of Batra Hospital and Medical Research Centre.

6. On 10.06.1949, Ministry of Finance and Ministry of

Rehabilitation decided to allot land on incentivized rates to institutions of secular and non-communal character with an intention to give incentive to all charitable trusts and institutions to open schools, hospitals etc. It was contended on behalf of the information seekers (arrayed as respondent no.2 in the respective petitions) that the land measuring about 11 acres, which is occupied by the petitioner society is being utilised for running a hospital and other ancillary purposes, was provided at concessional rates and, therefore, the petitioner society is controlled and substantially financed by the Government. This contention was accepted by the CIC.

7. The CIC also noted that the Delhi Development Authority (DDA) vide letter dated 03.12.2004 had directed the petitioner to provide free beds to the extent of 25% of the total beds and free OPD to the poor and indigent patients and had further directed that a representative of Directorate of Health Services, Govt of NCT of Delhi would also be a member of the Managing Committee of the Society/Hospital.

8. The CIC also observed that the Management is running the hospital from donations and income from patients and is also claiming exemption from payment of income tax.

9. The CIC analyzed the details of the extent of land, rates of premium and rents payable in respect of the land as submitted by the petitioner in terms of the directions issued by the CIC on 09.10.2014. A tabular statement indicating the same is set out below:-

Land Area (Acres)	Date of Execution	Date of Operation	Purpose	Total Payment	Annual Rent(%)
0.8325	03.05.1985	28.11.1983	Essential staff quarters	Rs. 4,99,500/-	2.5
4.7175	03.05.1985	28.11.1983	Hospital	Rs.47,175/-	5
0.64	03.05.1985	31.05.1979	Essential staff quarters	Rs.64,000/-	2.5
3.61	03.05.1985	31.05.1979	Hospital	Rs.18050/-	5
1.23	24.07.2000	14.03.1996	Dharamshala & Nursing School	Rs.9840000/-	2.5

10. In view of the above, the CIC concluded that the petitioner is funded directly or indirectly from the government coffers or public money. The CIC also referred to the decision of the Division Bench of this Court in the case of ***Delhi Sikh Gurudwara Management Committee v. Mohinder Singh: LPA no. 606/2010, dated 12.09.2012***, wherein this Court had held that "*if a body either owned by the appropriate government or controlled by the appropriate government or substantially financed directly or indirectly by the appropriate government, it would become public authority*".

11. The CIC concluded that the petitioner was a public authority since it is indirectly financed for promotion of public services by the Govt of NCT of Delhi; more particularly by the DDA. In view of the above, the CIC concluded the petitioner to be a 'public authority' within the meaning of Section 2(h) of the RTI Act.

Reasons and Conclusion

12. Before proceeding further, it would be relevant to refer to Section 2(h) of the RTI Act, which defines the expression 'public authority'. Section 2(h) of the RTI Act is set out below:-

> "2. Definitions.- In this Act, unless the context otherwise requires,-
>
> xxxx xxxx xxxx xxxx
>
> ***(h) 'public authority'*** means any authority or body or institution of self-government established or constituted,—
>
> (a) by or under the Constitution;
>
> (b) by any other law made by Parliament;
>
> (c) by any other law made by State Legislature;
>
> (d) by notification issued or order made by the appropriate Government, and includes any—
>
> (i) body owned, controlled or substantially financed;
>
> (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government."

13. The aforesaid expression was examined by the Supreme Court in the case of ***Thalappalam Service Cooperative Bank Ltd. & Ors v. State of Kerala & Ors: (2013) 16 SCC 82***. The Court explained that

the use of the words "means" and "includes" in the definition of the term "public authority" clearly indicates that the categories listed therein are exhaustive. The Court also observed Section 2 (h) of the RTI Act referred to essentially six categories. The relevant extract of the said decision reads as under:-

> "31. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:
>
> (1) an authority or body or institution of self-government established by or under the Constitution,
>
> (2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,
>
> (3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and
>
> (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.
>
> 32. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:
>
> (5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,

(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government."

14. In the present case, admittedly, the petitioner does not fall in the categories under clauses (a), (b) or (c) of Section 2(h) of the RTI Act. Thus, the only question that arises is whether the petitioner can be held to be 'public authority' within the meaning of Section 2(h)(d)(i) or 2(h)(d)(ii) of the RTI Act. In other words, whether the petitioner is a *body owned controlled or substantially financed* directly or indirectly by funds provided by the appropriate government or is a Non-Government Organization (NGO) substantially financed, directly or indirectly by funds provided by the appropriate government.

15. Concededly, there is no direct finance that is provided by the Government. According to CIC, the appropriate government in relation to the petitioner could be the Government of NCT of Delhi and more importantly the DDA. This conclusion is based principally on the ground that the land was allotted to the petitioner on concessional rates and the petitioner is paying a rental value which is lower than the market rate. The CIC has observed as under:-

> "This means, the society is enjoying to have its entire hospital on the land paying the rental value as per the rates of value fixed up long ago, which amounts to substantial funding indirectly. Whether it is called 'incentive' or 'subsidy'-or 'concession', to that extent of low value, compared, to market rate, the respondent authority has been indirectly financed which is 'substantial'"

16. This Court is unable to subscribe to the above view. In ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*), the Supreme Court had further explained that mere providing subsidies, grants, exemptions, privileges cannot be said to be providing funding to the substantial extent.

The relevant observations of the Supreme Court are extracted below:-

> "Merely providing subsidies, grants, exemptions, privileges, etc. as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist."

17. Concededly, the petitioner was not given any special grant or any special treatment by allotment of land. The land was leased to the petitioner as per the prevalent policy of the Government at the material time. Leasing of land for the purposes of education and health care to Non-Governmental Organizations for establishing educational institutes and health care facilities at a rate lower than what is charged for commercial establishments, cannot be considered as financing those institutions. The allocation of the resource of land for various purposes and charging appropriate rate for the same does not mean that the particular lessees that acquire leasehold interest in land are financed by the Government. The object of leasing land at lower rates is to ensure the availability of health services at lower rates to the public. The incentive, if at all, is directed towards ensuring availability of healthcare and education to public at affordable rates and not to

finance the concerned entity.

18. The expression "substantial finances" would take in its fold bodies which would struggle to exist without such finances and survive on the resources provided by the Government. In the present case, there is no material which would indicate that the petitioner would be unable to survive if the lease rentals were increased.

19. The CIC had also noted that the petitioner was required to provide free beds to the extent of 25% of the total beds available and further free OPD to poor/indigent patients. However, the CIC failed to appreciate that such demands were made on the petitioner as a condition of lease. The rationale of insisting on free services is clearly to extract due value for allocation of land (including at concessional rates). This clearly indicates that the intention of the DDA was not to finance the petitioner but to ensure that affordable health care is available to the public. As stated above, there is no material to indicate that non availability of land at concessional rates would put the petitioner's survival in peril. Cost of inputs for providing services is a pass through costs and there is no material to establish that the same is not the case with the petitioner.

20. In ***Thalappalam Service Cooperative Bank Ltd*** (*supra*), the Supreme Court had explained the meaning of the expression "a body owned". The relevant extract of the said decision reads as under:-

> "35. A body owned by the appropriate Government clearly falls under Section 2(h)(d)(i) of the RTI Act. A

> body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance, etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate Government."

21. In the facts of the present case, it is difficult to accept that the petitioner is a body owned by the Government.

22. This Court is unable to accept the view that merely because the land on which the petitioner is running a hospital was allotted by the DDA at concessional rates, the same must be construed as financed by the Central/State Government. And, as there is no other material to indicate that the petitioner was funded by Central Government or any State Government.

23. The CIC's conclusion that the petitioner has been substantially funded by an appropriate government and is thus a 'public authority' cannot be sustained.

24. For the reasons stated above, the petition is allowed. The impugned orders are set aside. All the pending applications are also disposed of. The parties are left to bear their own costs. However, a sum of ₹10,000/- paid to respondent no.2 is not required to be refunded.

VIBHU BAKHRU, J

FEBRUARY 06, 2018/RK